

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky 04-34946

Chapter 11

Koehnen Landscaping & Trucking, Inc.,

Debtor.

**NOTICE OF MOTION AND MOTION FOR APPROVAL OF
STIPULATION FOR USE OF CASH
COLLATERAL AND ADEQUATE PROTECTION BETWEEN DEBTOR AND
VERMILLION STATE BANK**

TO: ALL PARTIES IN INTEREST AS SET FORTH IN LOCAL RULE 1204(a):

1. Koehnen Landscaping & Trucking, Inc. ("Debtor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this Motion at 11:00 a.m. on October 4, 2004, in Courtroom No. 228B, 200 Federal Courthouse, 316 North Robert Street, St. Paul, MN 55101.

3. Any response to this Motion must be filed and delivered not later than 11:00 a.m. on September 29, 2004, which is (3) days before the time set for the hearing, or filed and served by mail not later than September 23, 2004, which is seven (7) days before the time set for the hearing. IF NO RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. ' 157 and 1334, and Bankruptcy Rule 5005. This proceeding is a core proceeding. The Petition commencing this Chapter 11 case was filed on August 23, 2004. This case is now pending in this Court.

5. This Motion arises under 11 U.S.C. ' 363. This Motion is filed under Bankruptcy Rules 4001(b), 9013 and 9014 and Local Rule 9013. Movant moves the Court for an Order authorizing the use

of cash collateral and approval of Stipulation Regarding Debtor's Use of Cash Collateral and Adequate Protection between Debtor and Vermillion State Bank.

6. Debtor is a Minnesota corporation engaged in the business of landscaping and construction. Debtor requires the use of cash collateral in order to pay operating expenses and to continue in business.

7. On date of filing Debtor was indebted to Vermillion State Bank ("Bank") in the approximate sum of \$535,533. The debt was secured by the properly perfected security interest in Debtor's accounts receivable, contract rights, inventory, equipment, vehicles, deposits and general intangibles originally filed on August 11, 1997 and continued on May 20, 2002 and August 2, 2004. This includes inventory, accounts receivable work in progress and deposits which can be readily converted to cash. ("cash collateral").

8. The only creditor that Debtor is aware of who holds a lien on Debtor's assets is the Internal Revenue Service. That lien was filed less than 45 days prior to the filing of the bankruptcy. Therefore it does not appear that the Internal Revenue Service has a lien on cash collateral

9. The Debtor and the Bank are proposing to enter into a Stipulation Regarding Debtor's Use of Cash Collateral and Adequate Protection between Debtor and Vermillion State Bank outlining the terms under which the Bank would consent to Debtor's use of cash collateral and what adequate protection would be provided to Bank.

10. The Debtor requires the use of cash collateral in order to continue in business. The Stipulation provides that Bank will be adequately protected by receiving a continuing lien on Debtor's assets and receiving certain adequate protection payments provided therein. Debtor believes that the value of the collateral would be substantially the same at the end of the period or will have increased.

11. The Debtor will, if necessary, produce testimony to support this motion from Kimberly Meyer, an officer of the Debtor.

WHEREFORE, the Debtor applies to the Court for an Order as follows:

1. Stipulation Regarding Debtor's Use of Cash Collateral and Adequate Protection between Debtor and Vermillion State Bank.

Hedback, Arendt & Carlson, PLLC

Dated: September 15, 2004

_____/s/ John A. Hedback_____

John A. Hedback, #142438

2855 Anthony Lane South, Suite 201

St. Anthony, MN 55418

(612) 436-3280

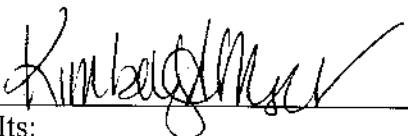
Attorneys for Debtor

VERIFICATION

I, Kimberly Meyer, an officer of Debtor, declare under penalty of perjury, that I have read the Notice of Motion and Motion for Approval of Stipulation Regarding Debtor's Use of Cash Collateral and Adequate Protection between Debtor and Vermillion State Bank, and that it is true and accurate, according to the best of my knowledge, information and belief.

Koehnen Landscaping & Trucking, Inc.
(A Minnesota corporation)

Dated: 9-10, 2004

By: 
Its: _____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky 04-34946

Chapter 11

Koehnen Landscping & Trucking, Inc.,

MEMORANDUM

Debtor.

Koehnen Landscping & Trucking, Inc., by its undersigned attorney, hereby provides the following memorandum in support of its motion for use of cash collateral.

1. Debtor is seeking the Court's approval for the use of cash collateral and adequate protection of secured creditors that have a lien on the cash collateral.

2. Debtor relies on the statement of facts set forth in the verified motion papers.

3. 11 U.S.C. ' 363(c)(2) allows a debtor-in-possession to use, sell or lease cash collateral if the entity holding the lien on the cash collateral consents or if the Court approves the use after notice and a hearing. The Court shall approve the use of the property if it finds that the interests of the secured creditor are adequately protected.

Debtor reserves the right to submit supplementary Memorandums of Law and Fact in response to any objections submitted herein.

Hedback, Arendt & Carlson, PLLC

Dated: September 15, 2004

_____/s/ John A. Hedback_____
John A. Hedback, #142438
2855 Anthony Lane South, Suite 201

St. Anthony, MN 55418
(612) 436-3280
Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. BKY 04-34946

Koehnen Landscaping & Trucking, Inc.,

Chapter 11 Case

Debtor.

STIPULATION REGARDING DEBTOR'S USE OF
CASH COLLATERAL AND ADEQUATE PROTECTION

This Stipulation is made this 10th day of September 2004, by and between Koehnen Landscaping & Trucking, Inc. ("Debtor") and Vermillion State Bank ("Bank").

RECITALS

A. Debtor filed a Petition for Relief under Chapter 11 of the United States Bankruptcy Code on August 23, 2004. That Case is now pending as a Chapter 11 Case before the United State Bankruptcy Court for the District of Minnesota as BKY No. 04-34946. Bank is a secured creditor of the Debtor under 11 U.S.C. Section 506 pursuant to a promissory note dated April 8, 2004, in the original principal amount of Six Hundred Thirty-two Thousand and no/100 Dollars (\$632,000.00) ("Note"). The Note is secured by all the debtor's accounts and other rights to payment, inventory, equipment, instruments and chattel paper, general intangibles, documents, government payments and programs, investment property and deposit accounts. The Note is the most recent of a series of loan agreements between Debtor and Bank, starting out from at least September 27, 2001. The Bank's security interest has been perfected by filing a UCC-1 with the Minnesota Secretary of State on August 11, 1997, which has Document No. 19646001, which has been renewed by

Continuation Statement filed May 20, 2002 as Document No. 2002411958 and Amendments filed August 2, 2004 as Document Nos. 200412729521 and 200412729456. That as of August 23, 2004, Debtor was indebted to Bank for Five Hundred Thirty Five Thousand Five Hundred Thirty-three and 17/100 Dollars (\$535,533.17) Principal, Two Thousand One Hundred Twenty-six and 89/100 Dollars (\$2,126.90) interest and interest continues to accrue at the rate of One Hundred Thirty-seven and 60/100 Dollars (\$137.60) per day.

C. The Security Agreement contained in the Note provides that the security shall secure the note as well as any other debt the Debtor had with the Bank at that time or existing thereafter.

D. That the security interest in the Debtor's titled vehicles has been perfected by the Bank appearing as a lien creditor on the Motor Vehicle Certificates of Title issued by the Minnesota Department of Public Safety, Drivers and Motor Vehicles Service Division (the "Lien Holder Card").

E. That David E. Koehnen has agreed to personally guarantee all debts of the Debtor to the Bank pursuant to the terms of a Personal Guarantee dated September 27, 2001. That the Guarantee of David E. Koehnen is also secured by a mortgage on certain real property owned by David E. Koehnen in the County of Dakota, State of Minnesota.

F. That Kimberly A. Meyer has agreed by the terms of a Third Party Pledge Agreement dated October 29, 2003 to place her 2004 Chrysler 300M VIN No. 2C3AE66GX4H664387 as additional collateral for the indebtedness of Debtor to Bank.

G. The Universal Note and Security Agreement, Guarantee, Third Party Pledge Agreement and Mortgage referred to above may hereafter sometimes referred to as the "Loan Documents."

H. That all amounts owed by Debtor to Bank referred to above which total Five Hundred Thirty-seven Thousand Six Hundred Sixty and 06/100 Dollars (\$537,660.06) as of August 23, 2004 (the "Filing Date" shall hereinafter be referred to as the "Indebtedness").

I. The Debtor has an affirmative obligation to provide adequate protection of the Bank's interest in its property as a condition for the use of collateral and "cash collateral" as that term is defined under 11 USC Section 363.

J. Debtor desires to provide for adequate protection of the Bank's interest in collateral and cash collateral, on the terms and conditions set forth herein. The Bank is willing to provide its consent to the use of collateral and cash collateral on the terms and conditions set forth herein.

ACKNOWLEDGMENTS

A. As of August 23, 2004, the Debtor hereby acknowledges that it is justly indebted to the Bank pursuant to the Note in the principal sum of Five Hundred Thirty-five Thousand Five Hundred Thirty-three and 17/100 Dollars (\$535,533.17) plus accrued interest of Two Thousand One Hundred Twenty-six and 89/100 Dollars (\$2,126.89), together with and subject to the Court's approval, Bank's attorneys' fees and court costs. The amounts owing under the Note shall be collectively referred to hereafter as the "Indebtedness."

B. Debtor acknowledges that its Indebtedness to the Bank is secured by the lien of the Security Agreement and secured by a perfected security interest in the Debtor's accounts and other rights to payment, inventory, equipment, instruments and chattel paper, general and tangibles, documents, government payments and programs, investments, property and deposit accounts as those terms are defined in the Loan Documents, together with all the proceeds and products thereof, as arise from the Security Agreements described above (collectively the "Collateral").

C. Debtor acknowledges that its indebtedness to the Bank is a secured claim within the meaning of 11 U.S.C. Section 506.

D. Debtor acknowledges that it has been in default under the terms of the Loan Documents by reason of tax liens being filed by the Internal Revenue Service against the Debtor which constitute a default under the Loan Documents.

E. Debtor acknowledges that payment of its Indebtedness to the Bank is absolutely and unconditionally due and payable which indebtedness is not subject to any defense, offset or counterclaim and Debtor releases and waives any right to object to the allowance of the claim of Bank or the collateral held as security therefore.

F. As of August 23, 2004, the Debtor's accounts receivables had a value of \$_____ and Debtor's cash and bank account balances totaled \$43.51.

NOW THEREFORE, in consideration of the mutual premises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Use of Cash Collateral.

1.1 Subject to Debtor's full and timely performance of the terms and conditions of this Stipulation, Bank shall consent to Debtor's use of cash collateral until December 15, 2004.

1.2 Debtor shall utilize all cash collateral for the ordinary course expenses of Debtor's business and in the normal course of business. For the purposes of this Agreement, ordinary course of business shall be the payment of all routine and customary operating expenses including, without limitation, the purchase of fuel and inventory, wages, insurance, taxes and the like. The consent granted in this paragraph shall continue in full force and effect during the term of this agreement and as long as there is no condition of default as defined in this Agreement.

2. Post-Petition Liens/Adequate Protection.

2.1 As partial adequate protection in consideration for Debtor's use of Cash Collateral, Debtor hereby agrees to pay the following sums to the Bank:

September 15, 2004	\$12,300.00
October 1, 2004	\$12,300.00
October 15, 2004	\$12,300.00
November 1, 2004	\$12,300.00
November 15, 2004	\$12,300.00
December 1, 2004	\$12,300.00
December 15, 2004	\$12,300.00

Payments shall be sent to Bank at the address set forth in Section 12 below.

2.2 As and for additional adequate protection, Debtor hereby grants Bank a replacement lien in the same dignity, priority and effect as the pre-petition lien in all accounts and other rights to payment, inventory, equipment, instruments and chattel paper, general and tangibles, documents, government payments and programs, investments, property and deposit accounts as those terms are defined in the Loan Documents, together with all the proceeds and products thereof, and acquired by Debtor after commencement of Debtor's bankruptcy case to secure the diminution of the value of the Collateral subsequent to the commencement of this case as well as all general intangibles obtained post-petition. Such post-petition assets subject to Bank's replacement lien shall also constitute "Collateral" as that term is defined in the Loan Documents.

2.3 Debtor shall at all times maintain sufficient insurance on the Collateral which shall list Bank as a lien holder.

2.4 The replacement lien and security interests herein granted shall secure repayment of the Indebtedness and cash collateral used by Debtor to the extent of the diminution of the Collateral subsequent to the Commencement Date.

2.5 Debtor agrees to execute such financing statements, security agreements or amendments thereto and the documents which Bank may, from time to time, require to evidence the replacement lien granted by this Stipulation and the Court, and the automatic stay shall be lifted to allow the Bank to record such financial statements in the appropriate filing offices.

2.6 Debtor agrees that while this Stipulation is in effect it will not, without the prior written consent of Bank, engage in or seek authority for any borrowing or use of cash collateral derived from the Bank's Collateral or any use, sale or lease of the Collateral other than in the ordinary course of business. The Bank agrees that it shall not unreasonably withhold such consent.

3. Retention of Pre-Petition Security Interest. The post-petition liens granted in paragraph 2 above (a) shall be in addition to the Bank's pre-petition collateral and security interest, (b) shall be effective as of the date of filing of debtor's petition without any further action by debtor or the Bank and without the execution or filing of any security agreements or financing statements, and (c) shall secure payment of an amount equal to the diminution in value following commencement of this proceeding of the Bank's pre-petition security interest in debtor's accounts, inventory and equipment, together with post-petition interest on the Bank's indebtedness and all expenses, including attorney fees and costs, incurred by the bank in connection with the negotiation, drafting and continued review of this Agreement, to the extent allowed under Section 506 of the Bankruptcy Code.

4. Reports. The debtor shall provide to Bank at the address provided in Section 12 hereof, ledgers from the Debtor-In-Possession Account, and accounts receivable reports. The first reports shall be delivered to the Bank on September 15, 2004, with the remaining reports to be provided monthly on the first of every month commencing on September 15, 2004. An officer of the Debtor shall verify these reports. Reports shall be delivered timely during the term of this Agreement. Debtor shall also

provide Bank with copies of all financial information that is provided to the U.S. Trustee at the time such information is provided to the U.S. Trustee.

5. Debtor-in-Possession Account. Debtor shall maintain its Debtor-In-Possession Account at Vermillion State Bank during the term of this Agreement.

6. Events of Default.

6.1 Upon the occurrence of any of the following events of default, (i) all indebtedness of the Debtor to Bank shall, at Bank's option, become immediately due payable, without notice or demand, and (ii) Bank may immediately, without notice, demand or any period of grace, withdraw its consent to use of its cash and other collateral under Paragraph 2 hereof. In addition to, and not in limitation of the foregoing, upon the occurrence of an event of default described in Paragraph (a), (b), (d), (f), (g), or (i), below, Bank, upon five days written notice to the Debtor and its counsel, and the Debtor's failure to cure or remedy such default within such period, shall be entitled to seek, on an expedited basis, an order from the Bankruptcy Court terminating the automatic stay of 11 U.S.C. Section 362. Debtor agrees a motion under Section 362 may be filed if:

(a) any of Bank's collateral is relocated (without consent of Bank under paragraph 2.6 above), converted, lost or not accounted for by the Debtor; or

(b) the Debtor shall fail to make any payment required hereunder; or

(c) the order entered by the Court approving the terms of this Stipulation, or any subsection or portion thereof, shall be vacated, reversed or modified; or

(d) the Debtor shall fail to comply with any of its obligations under the Code or other applicable law; or

(e) the Debtor shall fail to allow Bank to conduct an audit of the collateral during regular business hours; or

(f) the Debtor shall fail to deliver to Bank the reports required under Paragraphs 4, or

(g) the Debtor shall at any time discontinue or shall be ordered to discontinue the conduct of its business or the Debtor's case shall be converted to a Chapter 7 case; or

(h) the Debtor shall fail to pay when due the administrative expenses incurred in its case; or

(i) the Debtor shall not have sufficient cash available to it to continue to conduct its business; or

(j) the Debtor shall breach any of its obligations under this Stipulation.

7. Reservation of Rights. Except as otherwise expressly set forth herein, Bank reserves and retains all rights it may have as to its claim in the collateral and all rights against any and all other collateral security held by Bank, and against any and all third parties.

8. Complete Agreement. This Stipulation sets forth the complete agreement of the parties. It may not be modified, waived or changed, except by writing signed by the party to be bound thereto.

9. Binding Effect. This Stipulation is binding upon the parties and their respective successors and assigns, including but not limited to Koehnen Landscaping & Trucking, Inc. individually and as Debtor-In-Possession and any successor entity or entities under any plan or reorganization of the Debtor. Any trustee in this Chapter 11 case or any converted Chapter 7 case shall be bound by this Stipulation.

10. Expenses. Debtor agrees to reimburse Bank for all reasonable attorney's fees and legal expenses incurred by Bank in connection with the negotiation, execution and delivery of this Stipulation, its administration, including audit costs, or the collection, enforcement or protection of this Stipulation, the indebtedness evidenced hereby or protection of this Stipulation, the indebtedness evidenced hereby or the security therefore.

11. Term. The term of this Agreement shall expire on December 15, 2004; provided, however, that this Agreement shall terminate of its own accord, if, prior to its expiration, an event of default has occurred, has been declared, and no cure has been made by Debtor.

12. Notices. Any notice required to be given pursuant to this Agreement may be delivered as follows:

If to the Debtor:

Koehnen Landscaping & Trucking, Inc.
9932 Rich Valley Blvd.
Inver Grove Heights, MN 55077

With a copy to its Counsel:

John A. Hedback, Esq.
2855 Anthony Lane #210
St. Anthony, MN 55418

If to the Bank:

Vermillion State Bank
ATTN: Kevin Pedelty
P.O. Box 28
Vermillion, MN 55085
With a copy to its Counsel:

Michael J. Iannacone
8687 Eagle Point Blvd.
Lake Elmo, MN 55042

Any report required by this Agreement may be delivered only to the Bank, without a carbon copy to its Counsel.

13. Court Approval. This Agreement is subject to the approval of the United States Bankruptcy Court for the District of Minnesota. The parties agree mutually to undertake to obtain Court approval of this Agreement as expeditiously as possible.

SEP-10-2004 17:03

VERMILLION BANK

P.02/02

09/10/2004 16:55 FAX 612 789 2109

F W B LAW OFFICE

WV11

Dated: 9/10, 2004HEDBACK, ARENDT &
CARLSON PLLCBy [Signature]John A. Hedback
Attorney for Debtor
2855 Anthony Lane #210
St. Anthony, MN 55418
(612) 436-3280Dated: 9/10, 2004

IANNAcone LAW OFFICE

By le/ PRATTMichael J. Iannacone
Attorney for Vermillion State Bank
8687 Eagle Point Blvd.
Lake Elmo, MN 55042
(651) 224-3361Dated: 9-10, 2004KOEHNEN LANDSCAPING &
TRUCKING, INC.By [Signature]Its OfficerDated: 9-10, 2004

VERMILLION STATE BANK

By [Signature]Its VICE PRESIDENT

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky 04-34946

Chapter 11

Koehnen Landscaping & Trucking, Inc.,

Debtor.

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, John A. Hedback, declare under penalty of perjury that on September 15, 2004, I sent by United States mail true and correct copies of the following documents:

1. Notice of Motion and Motion for Approval of Stipulation Regarding Debtor's Use of Cash Collateral and Adequate Protection between Debtor and Vermillion State Bank;
2. Memorandum of Law in Support of Motion;
3. Stipulation;
4. Order Approving Stipulation for Use of Cash Collateral and Adequate Protection; and
5. Unsworn Declaration for Proof of Service.

in an envelope by first class mail, postage prepaid, to each entity named below at the address stated below for each entity.

Office of United States Trustee
1015 US Courthouse
300 South Fourth Street
Minneapolis, MN 55415

See Service List attached hereto

Dated: September 15, 2004

_____/e/ John A. Hedback_____

Berkley Risk Administrat
P.O. Box 59143
Minneapolis, MN 55459

POMPS TIRE CO
PO BOX 1630
GREEN BAY WI 54305 1630

VERMILLION STATE BANK
107 EAST MAIN STREET
VERMILLON MN 55085

MINNESOTA DEPARTMENT OF
COMPLIANCE DIVISION
551 BANKRUPTCY SECTON
PO BOX 64651
ST PAUL MN 55164-0651

CCS
PAYMENT PROCESSING CENTE
PO BOX 55156
BOSTON MA 02205 5156

ST PAUL FIRE AND MARINE
5801 SMITH AVE
BALTIMORE MD 21209

MINNESOTA UI FUND
390 N ROBERT ST
ST PAUL MN 55101

Crum & Forster
7900 International Dr
Bloomington, MN 55425

INTERNAL REVENUE SERVICE
STOP 5700
316 N ROBERT ST
ST PAUL MN 55101-1474

Perfetti & Oberg Ltd
2233 N Hamline Ave Suite
ST PAUL, MN 55113

Wells Fargo Bank
Legal Compliance
P.O. Box 4063
Concord, CA 94524

Danner Inc
843 Hardman Ave S
S ST P, MN 55075

MICHAEL IANNACONE
8687 Eagle Point Blvd.
Lake Elmo MN 55042

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky 04-34946

Chapter 11

Koehnen Landscaping & Trucking, Inc.,

Debtor.

**ORDER APPROVING STIPULATION FOR USE OF
CASH COLLATERAL AND ADEQUATE PROTECTION**

The above entitled matter came before the Court at a hearing on the motion of the Debtor for an order approving the use of cash collateral and adequate protection of secured creditors. Appearances were noted on the record.

Prior to the hearing, the Debtor entered into a Stipulation for Use of Cash Collateral and Adequate Protection with Vermillion State Bank regarding the use of cash collateral and adequate protection. A copy of the referenced Stipulation has been filed with the court. A copy of the Stipulation was circulated to the attorney for the United States Trustee for his review and comment. No objections for the use of cash collateral or to the approval of the Stipulation have been filed.

Based on the file, record and proceeding herein,

IT IS HEREBY ORDERED:

1. The Stipulation for Use of Cash Collateral and Adequate Protection Between Vermillion State Bank and Bankruptcy Estate is approved. Debtor is to comply with the terms of that Stipulation in addition to the provisions contained in this Order. Pursuant to that Stipulation, Vermillion State Bank is granted a replacement lien in Debtor's assets with the same priority and type it held on the date of the filing of the bankruptcy to the extent that Debtor uses cash collateral.

Unless further extended by this Court, the right to use cash collateral shall expire on December 15, 2004.

Dated: _____

BY THE COURT:

Gregory F. Kishel
United States Bankruptcy Judge